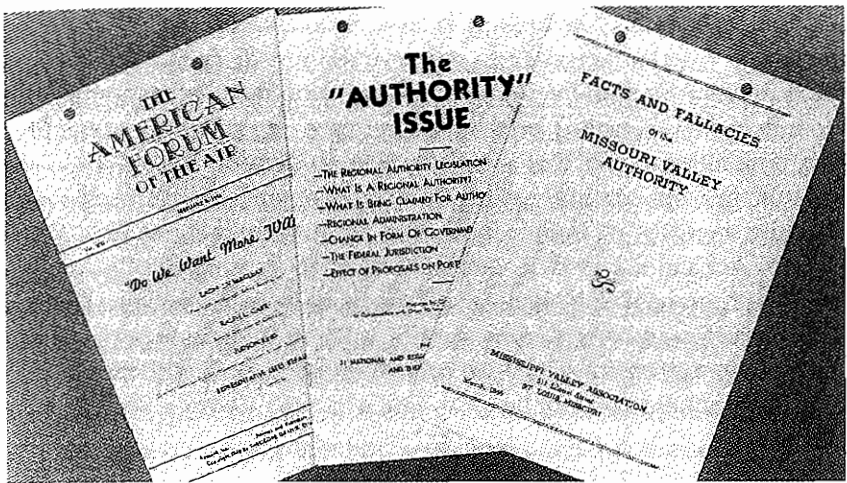


## IV. Missouri Valley Authority



*Missouri Valley Authority Literature.*

As floor manager of the Flood Control Act of 1944 and the Rivers and Harbors Act of 1945, Senator Overton had successfully steered the Missouri River basin development legislation through the Senate. He had acceded to the demands of the upper basin interests for protective legislation as embodied in Senator O'Mahoney's amendments. In the fall of 1945, Overton reminded his colleague that early in the two bills' legislative history Overton had advocated navigation, had recognized the "thinking of the lower Mississippi and Missouri" area residents, and had opposed the upper basin interests. But the efforts of western senators had caused both men to conclude that the legislation for the Missouri basin "was a proper [and] final settlement." Overton was "very much surprised" that some people seemed to want "to undo all that had been done after so much work, worry, and study."<sup>1</sup>

Final settlement was threatened by a regional authority bill that challenged the departmental model of development in the authorizing legislation. Under the auspices of the Committee on Irrigation and Reclamation, Overton conducted hearings in September 1945 on a bill introduced by Montana Senator James E. Murray to establish a Missouri Valley Authority.<sup>2</sup> Overton earlier had chaired a subcommittee of the

Commerce Committee that was considering the MVA legislation with respect to navigation and flood control. That subcommittee issued a report dated 7 May, however, on the whole bill and recommended that the water in Missouri basin streams be controlled by projects developed under auspices of existing federal agencies.<sup>3</sup>

The Commerce Committee struck from Senator Murray's bill (S. 555) all provisions affecting navigation, flood control, and any ancillary matters. It inserted language to preserve the jurisdiction and control of those functions within the War Department with the explanation that for more than 120 years the Corps had been improving rivers for navigation. The committee noted that since the Flood Control Act of 1936 the construction and operation of all flood control projects had been supervised by the Chief of Engineers. And it pointed out that the 1944 Flood Control Act and the 1945 Rivers and Harbors Act authorized a comprehensive program of flood control and navigation on the Missouri River to be constructed and operated by the Corps.<sup>4</sup> The committee declared that control over navigation and flood control should remain with the Chief of Engineers rather than with the proposed Missouri Valley Authority.

The Commerce Committee described the Corps of Engineers as responsive and effective in planning, constructing, and operating works of improvement. By 1945 the Corps had completed more than \$340 million in improvements within the Missouri basin and had been charged by Congress with executing an estimated additional \$576 million in improvements.<sup>5</sup> Murray's bill would transfer to the proposed MVA the construction, use, control, and operation of existing and future works. The committee rejected Murray's proposal.

The issues concerned with the departmental and regional authority models were not resolved by the Commerce Committee's action. By Senate Resolution 97, adopted 15 March 1945, the Committee on Irrigation and Reclamation was directed to consider those specific functional aspects of Senator Murray's bill. Again, Senator Overton chaired the subcommittee and conducted ten days of hearings that opened on 18 September. Three basin senators joined Overton to form the subcommittee: O'Mahoney of Wyoming, Chan Gurney of South Dakota, and Hugh Alfred Butler of Nebraska.

Again, a Senate subcommittee struck the MVA proposal. It too concluded that the adopted plan, existing agencies, and policies and procedures were sufficient for the development of the basin's water resources. The subcommittee's emphasis on irrigation and reclamation showed in its conclusion that

Under S. 555, policies and laws respecting the use and control of water, heretofore established by the Congress, are in a large measure destroyed, and the state water laws and states' rights and interests in water and its utilization and control are not adequately preserved and protected.

The subcommittee concluded that provisions of S. 555 were "wholly inadequate." It deleted from Murray's bill all provisions affecting irrigation and reclamation, power development, and "all matters incidental thereto." The Committee on Irrigation and Reclamation reported unfavorably on the entire MVA bill and recommended that it not pass.<sup>6</sup>

Senator Murray persisted. He redrafted and resubmitted legislation for a regional authority in a series of five bills, keeping the MVA issue in Congress for about eight years.<sup>7</sup> None was reported out of any congressional committee.<sup>8</sup>

The issue of shifting from the long-established policy of water resources development to a regional authority related essentially to management. MVA proponents were not opposed to any of the projects authorized in the basin, had no specific proposals as to additional projects, and had no complaints about the existing federal agencies. Their assertions centered on a perceived need for a corporation functioning under a regional authority.

Senator Murray and other advocates of regional authorities had a problem in that no clear organizational or operational guidelines existed for regional planning or watershed management. Some who were concerned with this issue saw in the TVA a model for resolving the fragmented responsibilities resulting from a multiple-agency mode of activities. Proponents of this single regional authority model felt that it could be transferred to other river basin regions.

The TVA project was, however, unique. First, when legislation was finally passed to create TVA in 1933, the nation was open to innovation. Second, the Tennessee basin was economically depressed and its people were open to a program that promised relief. Third, TVA offered the opportunity to break a stalemate over the disposition of Wilson Dam and the nitrate plants built during and just after World War I. At issue, respectively, were available power at reasonable rates and the use of the nitrate plants for the improvement of agriculture. A U.S. senator from the Missouri basin — Nebraska's George William Norris — was vocal in exploiting these facilities in order to mobilize a development program for the Tennessee basin.<sup>9</sup>

The timeliness and unusual combination of circumstances led Congress and the President to agree on launching the Tennessee Valley

Authority experiment. These unique factors also affected the general approach and policies for the broad development program. The TVA act provided for a regional agency in cooperation with federal and state governments to plan and carry out the multi-purpose development of an entire river system. TVA also would administer the use of all the basin's resources.<sup>10</sup>

TVA was concerned with more than water. In his message on the subject shortly after his inauguration, President Roosevelt said the proposed development led "logically to national planning for a complete river watershed involving many states and the future lives and welfare of millions. It touches and gives life to all forms of human concern." He requested that Congress create a Tennessee Valley Authority: "a corporation clothed with the power of government but possessed of the flexibility and initiative of a private enterprise." Roosevelt wanted Congress to vest the authority with broad power over "the proper use, conservation, and development" of the watershed region's natural resources for "the general social and economic welfare of the nation."<sup>11</sup>

Congress provided TVA with an unusual combination of legal powers.<sup>12</sup> It was made independent of all other federal departments and reported directly to the President and Congress. It was managed by a three-person board appointed by the President for overlapping terms. TVA was to work within the framework of national policies that were determined at a higher level. TVA benefited from substantial independence and initiative, subject only to general and oversight control of the President and Congress. The central concept of the authority model was to decentralize federal control by moving it into the region for intensive application.

TVA's enabling legislation contained general authorization for the entire program. Unlike the Corps of Engineers, which was guided by multiple laws covering its various missions, TVA was guided by one set of laws. If the nation were blanketed with such regional authorities, the American system of government could be altered to create a more unified system.

TVA opponents were unsuccessful in attacking the authority's constitutionality. In 1936, the U.S. Supreme Court held that TVA-built dams were covered by the war and commerce powers of the Constitution. The Court also ruled that TVA could sell electrical energy generated at the dams. These decisions sustained the legal basis for the vast TVA complex and its multi-purpose regional improvement program.<sup>13</sup>

Although interest in creating other river basin regional administrative authorities heightened after TVA survived its first court tests, no other

such authorities were established. This was because of the contention over transferability of the TVA experiment.

Arthur Morgan, the first chairman of TVA, analyzed the Tennessee and Missouri River drainage areas. He said the Tennessee area constituted "a natural unit" for flood control, navigation, and hydropower development, but that there was "no common interest" unifying the Missouri watershed region, "except the relatively minor issue of common storage and of apportioning water between irrigation and navigation." Morgan said there was "much confusion" about regional government and he concluded that the authority model was "a current delusion in the American mind" posing the threat of "irresponsible bureaucracy."<sup>14</sup>

The Missouri Valley Authority bills were highly controversial. Some held that the original bills, however, served a useful purpose even though unacceptable to any congressional committee. Both proponents and opponents erroneously concluded that the threat of an MVA prompted the Corps of Engineers and Bureau of Reclamation representatives to coordinate their plans.<sup>15</sup> More compelling reasons for this cooperation were congressional impatience, the urging of basin-state officials, and the desire of the agencies and their clients to secure project authorizations without further delay. The legislative history reveals how multiple groups pressed to achieve coordination before Senator Murray introduced his first MVA bill on 18 August 1944.

In explaining why the agencies coordinated their plans, Bureau of Reclamation Commissioner Bashore told a subcommittee of the Senate Committee on Irrigation and Reclamation that the principal issue was protecting the consumptive use of water for irrigation west of the 97th meridian. The bureau felt that Congress should resolve the "perplexing question of priorities"; that is, whether navigation use was to take priority over the beneficial use for consumptive irrigation:

When the Bureau of Reclamation and the Army understood the principle that the Congress was going to lay down — that irrigation priority was to be recognized — it was not difficult then to reconcile the two plans, because we of the Bureau, representing irrigation, felt that no navigation improvement would jeopardize irrigation projects upstream to the extent of 4,760,000 acres.

Bashore concluded that "it was not possible to resolve that question until Congress spoke, and then when Congress spoke it was comparatively easy."<sup>16</sup>

Congress accepted the two agencies' coordinated engineering plan, thus enabling construction to begin. MVA proponents, therefore, could

no longer justify the need to create a new agency and give it two years in which to formulate a plan. Nor was there need to give any agency the broad powers contemplated in Senator Murray's bill. Montana Governor Sam C. Ford of the senator's home state expressed the opposition position: "It is clear that the MVA is not needed, and there are many reasons why it is undesirable."<sup>17</sup>

Other basin governors agreed with Ford. The Missouri River States Committee, or "Governors' Committee," which had been instrumental in getting the Missouri basin legislation passed, adamantly opposed the MVA bill and affirmed its support for the Flood Control Act of 1944. On 15 August 1945, the MRSC adopted a statement proposed by Colorado Governor John L. Vivian opposing "the delegation of authority to any commission, board, agency, or authority, by whatever name that would function with unchecked powers in the control of natural resources." The committee endorsed the adverse report of the Senate Commerce Committee on Senator Murray's proposal to create an MVA and urged each basin state to continue vigorous representation before all congressional committees considering the matter.<sup>18</sup>

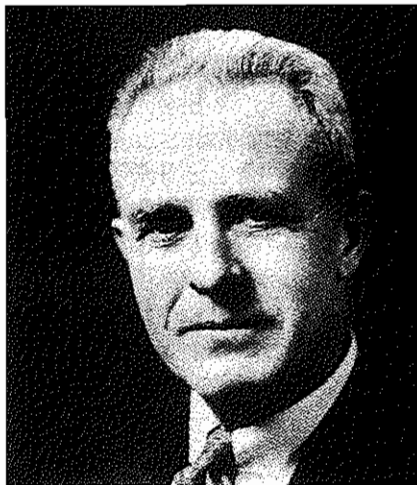
The MRSC adopted a two-page statement of policy in which the basin governors stated that the interests of their constituents throughout the watershed region would "be best advanced by supporting the coordinated plan of the Bureau of Reclamation and the Corps of Army Engineers." The committee recommended the following:<sup>19</sup>

1. That Congress appropriate money to get construction under way and in sufficient amount to contribute to postwar employment.
2. That each project's engineering specification be evaluated and adjusted to make the greatest possible contribution to the comprehensive basin-wide development.
3. That continuing efforts be made through existing agencies cooperating with the states, for water and related land use policies that would bring developments advantageous to the various diverse areas of the watershed region.
4. That Congress respect the lawful rights of the states as well as safeguard their economic interests and the general welfare of the basin's people.

The policy statement and recommendations prepared by O.S. Warden of Montana, Clifford Stone of Colorado, and South Dakota Representative Francis Case concluded with the strong endorsement that "this

committee of governors and their advisers, with constantly increasing interest, pledges state cooperation at all times in making and executing programs for the development of the land and water resources of the ten states." This position was approved by the governors or their representatives from eight of the ten basin states, with no opposing vote from those present.

South Dakota Governor Merrill Q. Sharpe, chairman of the MRSC, reinforced the states' committee position in a statement before the Senate's Irrigation and Reclamation subcommittee. Sharpe said the authorized plan was "a more practicable, beneficial, and acceptable plan for Missouri River development in South Dakota than the method provided by S. 555." He emphasized that "As chairman of the Missouri River States Committee, I hereby submit the same general opinion and conclusion as to the entire Missouri River basin."<sup>20</sup>



*South Dakota Governor,  
Merrill Q. Sharpe.*

Clearly, basin residents who favored retaining the departmental model outnumbered those who wanted a regional authority. J. Howard Toelle, professor of mining and irrigation law at Montana State University, expressed the majority opinion: "... it is unthinkable that [the policy established by Congress within the last year] should be changed and the future formulation of policy on these vital matters be left to a federal corporation." He held that the federal agencies' action was in accord with the Constitution, in harmony with state and local governments, and consistent with the American tradition of free enterprise. For these reasons, Toelle argued for rejecting the MVA and proceeding with the departmental model and adopted plan.<sup>21</sup>

In his statement to the Senate Irrigation and Reclamation subcommittee, Toelle emphasized western water law in testifying on behalf of the Montana Reclamation Association. He focused on which aspect of the regional authority model troubled irrigation interests the most. He, like most reclamation advocates, believed Senator Murray's MVA bill:

... would work a revolution in our western system of water rights so vital to our area. We in the West have

developed a natural regionalism in our irrigation laws. S. 555 would force us into an artificial and unnatural centralization or "basinization" contrary to our interests.

Toelle effectively expressed the position of upper basin resource development advocates. He said that water was "the lifeblood of Montana" and that dryland areas were declining while irrigated areas were expanding. Most future growth in the upper area, he believed, would come through an increase in irrigated agriculture:

While we hope and believe that ordinarily the Missouri will be found ample for all proper uses, we believe, in case of scarcity, agriculture in the upper basin should come first. . . . So it is that Montana views with favor the 1944 omnibus flood control measure and the 1945 rivers and harbors bill giving preference for irrigated agriculture to water rising in states wholly or partly west of the 98th meridian.

Clifford Stone's statement to the committee stressed how state laws were "legally and from a practical point of view, interfered with by the powers delegated" to the authority by S. 555.<sup>22</sup> He read from section 10 of the bill, which provided that

Nothing in this Act shall be construed as affecting or intended to affect or in any way to interfere with any right acquired under the laws of any state or territory relating to the control, appropriation, use or distribution of water used in irrigation, and nothing herein shall in any way affect any right of any state or of the federal government or of any landowner, appropriator, or user of water, in, to or from any interstate stream, or the waters thereof: Provided, that nothing in this section shall limit the authority of the Corporation to acquire by purchase, lease, condemnation or donation, real or personal property, or any interest therein.

Stone attacked this section on three points. The provision designed to protect present vested rights was limited to use "in irrigation." Vested rights in the upper Missouri basin and west of the 98th meridian might be acquired for water under state laws for municipal, domestic, mining, livestock, and industrial purposes, as well as for irrigation.

Stone claimed that under section 10, federal water rights on any interstate stream equated to the right of any state or individual appropriator. He did acknowledge that the federal government's right to appropri-



ate water under state law had been established. But section 10 "did not go to that point." Stone concluded that section 10 was set out to "appease those who wish to have their rights in water under state law protected." He said that it would provide no protection whatsoever because where the use of water under state law for irrigation and other beneficial consumptive uses conflicted with federal powers, the bill's intent was that "federal control must prevail."

Stone denounced what he foresaw as "ultimate federal control for all purposes" and said that state laws would "be evaded." The proponents of Senator Murray's bill were, Stone contended, asking Congress to delegate to an MVA the power that had been reserved to the states by the Tenth Amendment to the Constitution. Stone said that if such an authority were granted powers of government over water as contained in S. 555, "it would be impossible to incorporate . . . protection of rights in interstate waters under state laws."

Stone added that section 10 would enable the MVA to take away any vested water rights through condemnation. He explained that substantial water rights had been acquired by various interests in the upper basin and throughout the West. Condemnation of water rights, Stone said, might be "exercised arbitrarily, and the people will have no security in these rights." Stone contended that S. 555 granted power to control a right that was basic to agricultural development. He said the bill was "dangerous in the extreme" to the "security [of] the property rights of western farmers."

Senator Overton interjected that "To file condemnation of water rights seems to be one of the main purposes of the authors of this bill." Stone responded that the MVA "would claim the water under their general powers given to them under the federal jurisdiction. So they get it both ways. We have no protection as to the vested rights, and we have no protection as to the ability of the people to acquire future rights."

These were reasons enough for western water users and developers to oppose the MVA; but they found others as well. At a meeting held at Salt Lake City, Utah, on 16 and 17 April 1945, the powerful legislative committee of the National Reclamation Association opposed S. 555 and all other regional authority bills.<sup>23</sup> The full association, along with 19 other special-interest organizations, endorsed a joint letter to Congress emphasizing the appropriateness of the traditional departmental model of federal land and water resources development and management. These 20 groups feared that basin authorities would result in "discharge of the old federal agencies, the Army Engineers, the Bureau of Reclamation and many agencies within the Department of Agriculture, in favor of new federally financed corporations."<sup>24</sup>

These western-state interests supported the Flood Control Act of 1944 as constituting a water "bill of rights" under the auspices of the existing federal agencies. The provisions of the water bill of rights act included the following:

1. The rights and interests of the States in determining the development of watersheds within their borders shall be recognized.
2. Affected states shall participate with the federal agencies in charge of planning studies and with Congress in resolving disputes.
3. Federal agencies shall be required to cooperate with investigations concerning waters arising in the arid West.
4. The use of water for navigation in states lying wholly or partly west of the 98th meridian shall be only such as does not conflict with the beneficial consumptive use of water for domestic, municipal, stock water, irrigation, mining or industrial purposes.
5. Investigations and projects for runoff and water flow retardation and soil erosion prevention on watersheds shall be under the jurisdiction of the Department of Agriculture.
6. The Corps of Engineers shall be authorized to construct, maintain, and operate public park and recreational facilities in reservoir areas.
7. Electric power generated at reservoir projects under control of the War Department, and not needed in operation of the projects, shall be transmitted by authority of the Secretary of Interior at the lowest possible rates approved by the Federal Power Commission.
8. The Secretary of War shall be authorized to make contracts with states, municipalities, private concerns or individuals for domestic and industrial uses of surplus water available at any reservoir under the control of the War Department.
9. The Army Engineers shall prescribe regulations for the use of storage allocated for flood control or navigation at all reservoirs constructed with federal funds.
10. The Secretary of the Interior shall be authorized to build reclamation works to utilize surplus water of flood control reservoirs after making a report and findings as

provided in federal reclamation laws and authorization by the Congress.

Under this bill of rights, the western interest groups held that "the old established and experienced federal agencies of the government" had "coordinated and integrated their plans for the development of the Missouri River basin into one overall comprehensive multiple purpose plan." Under congressional guidance, that plan united the federal agencies "into an effective team" in close coordination with the states.

The 20 organizations then stated their reasons for opposing the creation of any regional authorities. Those affected had "full confidence" in the federal agencies that would be relegated to minor roles. An authority in the form of a federal corporation would be free of many legal and congressional restraints, and states would be cast as "archaic political units." Economic development and individual enterprise would be subject to domination by "a corporation clothed with the power of government." And in the arid states, where state law provided irrigation water users property rights in water, they would under an authority become water tenants of a corporation that made and enforced the rules and regulations.

These were potent inducements for congressional committees to reject proposed regional authority bills. On 27 September 1945, Senator Overton in a colloquy with Senator O'Mahoney summarized what became the "final" word on serious congressional consideration of an MVA.<sup>25</sup> Overton said that Senator Murray's bill exercised "supreme and autocratic power" with respect to water and "totalitarian power over the economic development of the West." He believed a regional authority could ignore state and federal laws that applied to irrigation. If its authority were established, it could "sweep through the West like a prairie fire." Overton asserted that a regional authority would subvert traditional water resources development and management in the Missouri basin. Powers proposed to be delegated to the MVA would be so broad as to leave Congress with little leeway for conflict resolution through trade-offs and compromise.

Mississippi Representative Will M. Whittington, who had managed the House flood control bill in 1943 and 1944, added that flood control policy provided that it "should be authorized and appropriated for by the elected representatives of the people." He said that taxpayers did not want an "experimental agency telling them what to build, without scrutiny of appropriations and without general supervision" by Congress.<sup>26</sup> In rejecting the regional authority model, Whittington vowed ongoing support for the idea that the Corps continue to be the "chief administrative agency of

the Missouri and of all other river basins in the United States." Essentially, this was the decentralized administration model that had been in place for over 150 years.

Senator Overton and the Commerce Committee recommended that the Corps of Engineers continue to direct Missouri River navigation and flood control work. The report stated that the entire Mississippi drainage basin, in which the Missouri River was only a tributary, was affected by the issues. Overton's committee held that the Corps was "the agency best qualified" to deal with those issues.

C. Herman Pritchett, a regional authority scholar, took issue with Overton's conclusion. Pritchett believed that the backgrounds and special responsibilities of the Bureau of Reclamation and the Corps of Engineers precluded them from administering a basin wide plan for the Missouri. As he put it, "a single organization responsible to both ends of the valley would more likely get a proper view of the needs of both ends of the valley." Overton retorted: "There is one agency." Pritchett countered with, "You have the Reclamation Bureau *and* the Army Engineers." Overton responded, "Yes, but the overall agency is the government of the United States. That is where difficulties are brought and settled." Overton maintained that Congress was the coordinating agency for the federal government.<sup>27</sup>

While Overton and most of Congress were unwilling to relinquish control of the traditional departmental model of river development and management, President Roosevelt long had championed the regional authority model. He died on 12 April 1945 and was succeeded by Harry S. Truman.

As President, Truman was ambivalent about regional authorities and did not press for their establishment. At a dedication ceremony of the Tennessee Valley Authority's Kentucky Dam at Gilbertsville on 10 October 1945, he said:

State and local agencies, public and private, have joined with TVA in a two-way partnership. This was a natural result of the policy of regional decentralization. That same policy ought to be followed in the other river valleys as regional agencies are created by the Congress and set to work.

But Truman added: "Let me emphasize that in the last analysis such development is a matter for the people in each basin to decide."<sup>28</sup>

As a senator, Truman had been a "strong supporter" of the TVA and "the idea it represents."<sup>29</sup> As Vice President, while presiding over the Senate, Truman referred Murray's authority bill to three committees. In

the first two, he surely knew it would not survive. He understood the strong opposition in Congress to regional authorities and did not want to jeopardize such a political base. On 24 April 1945, Senator Murray asked Truman for a letter endorsing passage of the MVA bill. Matthew J. Connelly, secretary to the President, responded on 2 May that Truman had the "request under consideration."<sup>30</sup> As President, Truman was a practical politician making no real effort to win congressional backing for his program in the face of congressional resistance.



*President Harry S. Truman and General Lewis A. Pick, at Ft. Peck.*

A conservative coalition of southern Democrats frequently teamed with Republicans in opposing the President's programs. Progressive New Dealism was losing its leaders and spokespersons. Truman needed the support of the southern Democrats, who in turn wanted distributive-policy public works projects. The President could publicize the need for an enlarged water resources program, objectives both he and southern Democrats desired.<sup>31</sup>

Throughout his presidency, Truman was temperate in promoting land and water resources development under the traditional departmental model. He made his strongest statement on the subject to Congress on 16 July 1947, when he asked that a comprehensive development plan be funded for the drainage basin of the Mississippi River and its tributaries, including the Missouri. He sounded like FDR when he asserted: "We must never forget that the conservation of our natural resources and their wise use are essential to our very existence as a nation." Truman wanted Congress to adopt an "orderly program of appropriations" totaling \$250 billion over 10 years, in addition to \$66 billion for that fiscal year.<sup>32</sup>

Truman's proposal for such public-works spending came at a critical time for the proposed Missouri basin development plan. It abrogated any realistic discussion of an MVA.

The pragmatic Truman stressed that his proposal did "not change the desirability of the ultimate establishment of valley authorities." He explained that the urgency of the flood problem compelled the federal government to "take the necessary steps to expedite this problem without awaiting determination of the administrative pattern for the various regional valley development programs." Truman called for a prompt start of the ten-year program "consistent with whatever type of administrative authority may be determined to be best suited to meet regional and national needs." He added that the already authorized program must be accelerated and money put in the hands of the traditional agencies — the Bureau of Reclamation, the Soil Conservation Service, and the Corps of Engineers — as quickly as the economy would permit: "In that way we shall save ourselves untold billions and pave the way for the wealth production that surely will flow from the integrated development of our valleys."

Congress did appropriate the money necessary to proceed with the authorized Missouri basin water resources development plan. It also continued to control natural resources matters through fragmented congressional committees and a widely distributive national public-works funding policy. The legislators did not surrender administrative control to any regional authority.



*Starting Construction on the Pick-Sloan Plan, 21 March 1946.*